



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG

Docket No: 396-00

19 October 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested that the fitness report for 26 June to 26 August 1996 be removed or changed to a "not observed" report; that the nonjudicial punishment (NJP) of 26 March 1997 be set aside; and by implication, that reference to the NJP be removed from the fitness report for 6 February to 8 April 1997. Your request regarding the report for 26 June to 26 August 1996 (the copy you provided shows 25 June to 27 August 1996) could not be considered, as no report for the period in question appears in your Official Military Personnel File.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion from the Headquarters Marine Corps (HQMC) Military Law Branch, Judge Advocate Division (JAM3), dated 12 April 2000, and the report of the HQMC Performance Evaluation Review Board (PERB) in your case, dated 10 July 2000, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, they substantially concurred with the advisory opinion from JAM3 in finding that the NJP should stand. They were unable to find that you were made a "scapegoat" because you were under permanent change of station orders. Since they found no basis to remove the NJP, they had no grounds to amend the fitness report for 6 February to 8 April 1997. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

396-00



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070
JAM3

12 APR 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF STAFF SERGEANT [REDACTED]
[REDACTED] MARINE CORPS

1. We are asked to provide an opinion on Petitioner's request for removal from his Official Military Personnel File (OMPF) of the service record book (SRB) entry that documents the nonjudicial punishment (NJP) he received on 26 March 1997.
2. We recommend that the requested relief be denied. Our comments follow.
3. Background. On 26 March 1997, Petitioner was punished at NJP for larceny and wrongful appropriation, in violation of Article 121, Uniform Code of Military Justice (UCMJ). The proceeding was not recorded on page 12, Report and Disposition of Offenses (NAVMC 118-12) of Petitioner's SRB. The NJP was commented on in Petitioner's fitness report for the period, and the fitness report was properly included in his OMPF. Petitioner contends that the NJP was unjust due to insufficiency of the evidence against him, and because he did not have sufficient time to rebut the allegations due to being in receipt of Permanent Change of Station orders.
4. Analysis. Petitioner's argument is without merit. No evidence is offered by the Petitioner to indicate that the punishment was not authorized based on the grade of the officer who imposed it, or that the NJP authority abused his discretion. Further, Petitioner fails to present any contemporaneous evidence that he did not freely accept NJP, or have sufficient time to prepare and present matters in defense, extenuation, and mitigation.
5. Conclusion. Accordingly, for the reason noted, we recommend that the requested relief be denied.

[REDACTED]
[REDACTED]
Head, Military Law Branch
Judge Advocate Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

396-00

IN REPLY REFER TO:
1610
MMER/PERB
10 JUL 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED], USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 26 Jan 00
(b) MCO P1610.7D w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 6 July 2000 to consider Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 970206 to 970408 (TR) was requested. In the alternative, the petitioner asked that the report be changed to a "not observed" evaluation. Reference (b) is the performance evaluation directive governing submission of the report.

2. Relative to the non judicial punishment (NJP) recorded in the fitness report, the petitioner contends that he is innocent and there was never sufficient evidence to support a finding of "guilty." Due to the age of the report and his belief that the Reporting Senior's assessment is inaccurate, the petitioner believes removal of the report is warranted.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The uncontroverted matter of fact is that the petitioner was the subject of company level NJP on 26 March 1997 for violation of Article 121 of the Uniform Code of Military Justice, and that occurrence was correctly recorded via the performance evaluation system. Notwithstanding the age/duration of the report, unless and until the NJP is set aside or otherwise expunged, removal of the report is not warranted.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Sergeant [REDACTED]'s official military record.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED] USMC

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps